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SENATE BILL 364

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO THE NEW MEXICO LOTTERY; CHANGING THE COMPOSITION OF THE AUTHORITY BOARD; REQUIRING THAT A PERCENTAGE OF EACH MONTH'S GROSS REVENUE BE DEPOSITED IN THE LOTTERY TUITION FUND; ELIMINATING THE LOTTERY RESERVE FUND; REQUIRING THE AUTHORITY TO COMPLY WITH THE PROVISIONS OF THE PROCUREMENT CODE; PROVIDING DUTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-24-1 NMSA 1978 (being Laws 1995, Chapter 155, Section 1) is amended to read:

"6-24-1. SHORT TITLE.--~~[Sections 1 through 34 of this act]~~ Chapter 6, Article 24 NMSA 1978 may be cited as the "New Mexico Lottery Act"."

Section 2. Section 6-24-4 NMSA 1978 (being Laws 1995, Chapter 155, Section 4) is amended to read:

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1 "6-24-4. DEFINITIONS.--As used in the New Mexico Lottery  
2 Act:

3 A. "authority" means the New Mexico lottery  
4 authority;

5 B. "board" means the board of directors of the  
6 authority;

7 C. "chief executive officer" means the chief  
8 executive officer of the authority appointed by the board  
9 pursuant to the New Mexico Lottery Act;

10 D. "lottery" means the New Mexico state lottery  
11 established and operated by the authority pursuant to the New  
12 Mexico Lottery Act;

13 E. "lottery contractor" means a person with whom  
14 the authority has contracted for the purpose of providing goods  
15 or services for the lottery;

16 F. "lottery game" means any variation of the  
17 following types of games, but does not include any video  
18 lottery game:

19 (1) an instant-win game in which disposable  
20 tickets contain certain preprinted winners that are determined  
21 by rubbing or scraping an area or areas on the tickets to match  
22 numbers, letters, symbols or configurations, or any combination  
23 thereof, as provided by the rules of the game; provided, an  
24 instant-win game may also provide for preliminary and grand  
25 prize drawings conducted pursuant to the rules of the game; and

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1 (2) an on-line lottery game in which a lottery  
2 game is hooked up to a central computer via a  
3 telecommunications system through which a player selects a  
4 specified group of numbers or symbols out of a predetermined  
5 range of numbers or symbols and purchases a ticket bearing the  
6 player-selected numbers or symbols for eligibility in a drawing  
7 regularly scheduled in accordance with game rules;

8 G. "lottery retailer" means a person with whom the  
9 authority has contracted for the purpose of selling tickets in  
10 lottery games to the public;

11 H. "lottery vendor" means any person who submits a  
12 bid, proposal or offer as part of a major procurement contract  
13 and any person who is awarded a major procurement contract; and

14 ~~I. "major procurement contract" means a contract~~  
15 ~~for the procurement of any lottery game product or service~~  
16 ~~costing in excess of seventy-five thousand dollars (\$75,000),~~  
17 ~~including but not limited to major advertising contracts,~~  
18 ~~annuity contracts, prize payment agreements, consulting~~  
19 ~~services, equipment, tickets and other products and services~~  
20 ~~unique to the lottery, but not including materials, supplies,~~  
21 ~~equipment and services common to the ordinary operations of a~~  
22 ~~corporation;~~

23 ~~J. "net revenues" means all lottery and nonlottery~~  
24 ~~revenues received by the authority less payments for lottery~~  
25 ~~prizes and operating expenses as provided in the New Mexico~~

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1 ~~Lottery Act; and~~

2 ~~K.]~~ I. "person" means an individual or any other  
3 legal entity."

4 Section 3. Section 6-24-5 NMSA 1978 (being Laws 1995,  
5 Chapter 155, Section 5) is amended to read:

6 "6-24-5. NEW MEXICO LOTTERY AUTHORITY CREATED.--

7 A. There is created a public body, politic and  
8 corporate, separate and apart from the state, constituting a  
9 governmental instrumentality to be known as the "New Mexico  
10 lottery authority". The authority is created and organized for  
11 the purpose of establishing and conducting the [~~New Mexico~~  
12 ~~state~~] lottery to provide revenues for the public purposes  
13 designated by the New Mexico Lottery Act.

14 B. The authority shall be governed by a board of  
15 directors composed of [~~seven~~] nine members who are residents of  
16 New Mexico appointed by the governor with the advice and  
17 consent of the senate. The members of the board of directors  
18 shall be prominent persons in their businesses or professions  
19 and shall be appointed so as to provide equitable geographical  
20 representation. No more than four members of the board shall  
21 be from any one political party. The governor shall [~~consider~~  
22 ~~appointing~~] appoint at least one member who:

23 (1) has at least five [~~years~~] years'  
24 experience as a law enforcement officer [~~at least one member~~  
25 ~~who~~];

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1                   (2) is an attorney admitted to practice in New  
2 Mexico [~~and at least one member who~~];

3                   (3) is a certified public accountant certified  
4 in New Mexico;

5                   (4) is a representative of a four-year public  
6 post-secondary educational institution; and

7                   (5) is a representative of a two-year public  
8 post-secondary educational institution.

9                   C. Board members shall be appointed for five-year  
10 terms. To provide for staggered terms, four of the initially  
11 appointed members shall be appointed for terms of five years  
12 and three members for terms of three years. Thereafter, all  
13 members shall be appointed for five-year terms. A vacancy  
14 shall be filled by appointment by the governor for the  
15 remainder of the unexpired term. A member shall serve until  
16 [his] a replacement is confirmed by the senate. Board members  
17 shall be eligible for reappointment.

18                   D. The board shall select [~~one of its members as~~  
19 ~~chairman~~] a chair annually. A [~~chairman~~] chair may be selected  
20 for successive years. Members of the board may be removed by  
21 the governor for malfeasance, misfeasance or willful neglect of  
22 duty after reasonable notice and a public hearing unless the  
23 notice and hearing are expressly waived in writing by the  
24 member.

25                   E. The board shall hold regular meetings at the

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1 call of the [~~chairman~~] chair, but not less often than once each  
2 calendar quarter. A board meeting may also be called upon the  
3 request in writing of three or more board members. A majority  
4 of members then in office constitutes a quorum for the  
5 transaction of any business and for the exercise of any power  
6 or function of the authority.

7 F. Board members shall receive no compensation for  
8 their services, but shall be paid expenses incurred in the  
9 conduct of authority business as allowed and approved by the  
10 authority in accordance with policies adopted by the board.

11 G. A board member shall be subject to a background  
12 check and investigation to determine [~~his~~] fitness for office.  
13 The results of that background check shall be made available to  
14 the governor and the senate."

15 Section 4. Section 6-24-7 NMSA 1978 (being Laws 1995,  
16 Chapter 155, Section 7) is amended to read:

17 "6-24-7. BOARD OF DIRECTORS--DUTIES.--The board shall  
18 provide the authority with the private-sector perspective of a  
19 large marketing enterprise and shall make every effort to  
20 exercise sound and prudent business judgment in its management  
21 and promotion of the lottery. It is the duty of the board to:

22 A. adopt all rules, policies and procedures  
23 necessary for the establishment and operation of the lottery;

24 B. maximize the [~~net~~] revenue for the public  
25 purposes of the New Mexico Lottery Act and to that end assure

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1 that all rules, policies and procedures adopted further revenue  
2 maximization;

3 C. appoint a chief executive officer, prescribe  
4 ~~[his]~~ the chief executive officer's qualifications, duties and  
5 salary and set the salaries of the other officers and employees  
6 of the authority;

7 D. approve, disapprove, amend or modify the annual  
8 budget recommended by the chief executive officer for the  
9 operation of the authority;

10 E. approve or disapprove all ~~[major]~~ procurements  
11 ~~[and approve, disapprove, amend or modify the terms of such~~  
12 ~~procurements recommended by the chief executive officer]~~ over  
13 seventy-five thousand dollars (\$75,000);

14 F. supervise the chief executive officer and the  
15 other officers and employees of the authority and meet with the  
16 chief executive officer at least once every three months to  
17 make and consider recommendations, set policies, determine  
18 types and forms of lottery games to be operated by the lottery  
19 and transact other necessary business;

20 G. conduct, with the chief executive officer, a  
21 continuing study of the lottery and other state lotteries to  
22 improve the efficiency, profitability and security of the  
23 authority and the lottery;

24 H. prepare quarterly and annual reports and  
25 maintain records as required under the New Mexico Lottery Act;

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1 and

2 I. pursue [~~any and all~~] other matters necessary,  
3 desirable or convenient for the efficient and effective  
4 operation of lottery games, the continued entertainment and  
5 convenience of the public and the integrity of the lottery."

6 Section 5. Section 6-24-19 NMSA 1978 (being Laws 1995,  
7 Chapter 155, Section 19) is amended to read:

8 "6-24-19. [~~MAJOR~~] PROCUREMENT--COMPETITIVE PROPOSALS.--  
9 [~~A.~~] The authority shall enter into a contract for a [~~major~~]  
10 procurement after evaluating competitive proposals and shall  
11 not design requests for proposals to provide only for sole  
12 source contracts. [~~The authority shall design requests for~~  
13 ~~proposals in such a manner as to encourage competitive~~  
14 ~~proposals. The board shall adopt procedures and standards~~  
15 ~~designed to allow the selection of proposals that provide the~~  
16 ~~greatest long-term benefit to the state, the greatest integrity~~  
17 ~~for the authority and the best service and products for the~~  
18 ~~public.~~

19 B. [~~In any request for proposal process~~] The  
20 authority shall conduct its own procurement, but the authority  
21 shall conduct all [~~major~~] procurement in [~~keeping with the~~  
22 ~~general principles of~~] accordance with the Procurement Code.

23 [~~C. The authority may make procurements that~~  
24 ~~integrate functions such as lottery game design and production,~~  
25 ~~lottery ticket distribution to retailers, marketing support,~~

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1 ~~supply of goods and services and advertising.]~~ In all  
2 procurement decisions, the authority shall take into account  
3 the particularly sensitive nature of the lottery and shall act  
4 to promote and ensure security, honesty, fairness and integrity  
5 in the operation and administration of the lottery and the  
6 objectives of raising ~~[net revenues]~~ revenue for the public  
7 purposes of the New Mexico Lottery Act. ~~[D.]~~ Procurements  
8 shall not be artificially divided to reduce the cost of the  
9 procurement below the ~~[major]~~ procurement ~~[threshold]~~  
10 thresholds provided in the Procurement Code."

11 Section 6. Section 6-24-24 NMSA 1978 (being Laws 1995,  
12 Chapter 155, Section 24, as amended) is amended to read:

13 "6-24-24. DISPOSITION OF REVENUE.--

14 A. As nearly as practical, an amount equal to at  
15 least fifty percent of the gross annual ~~[revenues]~~ revenue from  
16 the sale of lottery tickets shall be returned to the public in  
17 the form of lottery prizes.

18 B. No later than fifteen days after the end of each  
19 month, the authority shall transmit ~~[all net revenues]~~ at least  
20 thirty percent of the gross revenue for that month to the state  
21 treasurer, who shall deposit ~~[them]~~ it in the lottery tuition  
22 fund. ~~[Estimated net revenues shall be transmitted monthly to~~  
23 ~~the state treasurer for deposit in the fund; provided that the~~  
24 ~~total amount of annual net revenues for the fiscal year shall~~  
25 ~~be transmitted no later than August 1 each year.]~~

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1           C. ~~[In determining net revenues]~~ Operating expenses  
2 of the lottery include all costs incurred in the operation and  
3 administration of the lottery and all costs resulting from any  
4 contracts entered into for the purchase or lease of goods or  
5 services required by the lottery, including the costs of  
6 supplies, materials, tickets, independent audit services,  
7 independent studies, data transmission, advertising, promotion,  
8 incentives, public relations, communications, commissions paid  
9 to lottery retailers, printing, distribution of tickets,  
10 purchases of annuities or investments to be used to pay future  
11 installments of winning lottery tickets, debt service and  
12 payment of any revenue bonds issued, contingency reserves,  
13 transfers to the reserve fund and any other necessary costs  
14 incurred in carrying out the provisions of the New Mexico  
15 Lottery Act.

16           ~~[D. An amount up to two percent of the gross annual~~  
17 ~~revenues shall be set aside as a reserve fund to cover bonuses~~  
18 ~~and incentive plans for lottery retailers, special promotions~~  
19 ~~for retailers, purchasing special promotional giveaways,~~  
20 ~~sponsoring special promotional events, compulsive gambling~~  
21 ~~rehabilitation and such other purposes as the board deems~~  
22 ~~necessary to maintain the integrity and meet the revenue goals~~  
23 ~~of the lottery. The board shall report annually to the~~  
24 ~~governor and each regular session of the legislature on the use~~  
25 ~~of the money in the reserve fund. Any balance in excess of~~

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1 ~~fifty thousand dollars (\$50,000) at the end of any fiscal year~~  
2 ~~shall be transferred to the lottery tuition fund.]"~~

3 Section 7. Section 6-24-27 NMSA 1978 (being Laws 1995,  
4 Chapter 155, Section 27, as amended) is amended to read:

5 "6-24-27. REVENUE AND BUDGET REPORTS--RECORDS--  
6 INDEPENDENT AUDITS.--

7 A. The board shall:

8 (1) submit quarterly and annual reports to the  
9 governor and the legislative finance committee disclosing the  
10 total lottery revenue, prizes, commissions, ticket costs,  
11 operating expenses and ~~[net revenues]~~ other revenue of the  
12 authority during the reporting period and, in the annual  
13 report, describe the organizational structure of the authority  
14 and summarize the functions performed by each organizational  
15 division within the authority;

16 (2) maintain weekly or more frequent records  
17 of lottery transactions, including the distribution of lottery  
18 tickets to retailers, revenue received, claims for prizes,  
19 prizes paid, prizes forfeited and other financial transactions  
20 of the authority; and

21 (3) use the state government fiscal year.

22 B. The board shall provide, for informational  
23 purposes, to the department of finance and administration and  
24 the legislative finance committee, by December 1 of each year,  
25 a copy of the annual proposed operating budget for the

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1 authority for the succeeding fiscal year. This budget proposal  
2 shall also be accompanied by an estimate of the [~~net revenues~~  
3 revenue to be deposited in the [~~public school capital outlay~~  
4 ~~fund and the~~] lottery tuition fund for the current and  
5 succeeding fiscal years.

6 C. The board shall contract with an independent  
7 certified public accountant or firm for an annual financial  
8 audit of the authority. The certified public accountant or  
9 firm shall have no financial interest in any lottery  
10 contractor. The certified public accountant or firm shall  
11 present an audit report no later than March 1 for the prior  
12 fiscal year. The certified public accountant or firm shall  
13 evaluate the internal auditing controls in effect during the  
14 audit period. The cost of this financial audit shall be an  
15 operating expense of the authority. The legislative finance  
16 committee may, at any time, order an audit of any phase of the  
17 operations of the authority, at the expense of the authority,  
18 and shall receive a copy of the annual independent financial  
19 audit. A copy of any audit performed by the certified public  
20 accountant or ordered by the legislative finance committee  
21 shall be transmitted to the governor, the speaker of the house  
22 of representatives, the president pro tempore of the senate,  
23 [~~and~~] the legislative finance committee and the legislative  
24 council service library."

25 Section 8. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2007.

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